

# STATE OF NEW YORK

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2017-2018 Regular Sessions

## IN ASSEMBLY

January 9, 2017

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Introduced by M. of A. ROSENTHAL -- Multi-Sponsored by -- M. of A. PERRY  
-- read once and referred to the Committee on Education

AN ACT to amend the education law, in relation to prohibiting bullying  
on school property

The People of the State of New York, represented in Senate and Assem-  
bly, do enact as follows:

1 Section 1. Legislative intent. In recent years, New York has taken  
2 steps to ensure that school pupils, teachers and other personnel are  
3 provided with a safe and secure learning environment. However, egre-  
4 gious incidents of bullying, both in person and through the use of tech-  
5 nology, continue to plague all of our students. The legislature recog-  
6 nizes that bullying manifests in many forms and for innumerable reasons.  
7 The legislature finds it is vital to protect all students from acts of  
8 bullying, therefore, this legislation expands upon the provisions of  
9 chapter 482 of the laws of 2010.

10 While the physical wounds may heal, the effects of bullying can last a  
11 lifetime. Therefore, the legislature finds that prohibiting bullying is  
12 an appropriate means to enhance the safety of students in New York  
13 state's public schools. Furthermore, in today's age of advanced technol-  
14 ogy, twenty-four hour connectivity and social networking, students who  
15 are subjected to acts of bullying have no reprieve. Taunts and acts of  
16 bullying that begin in school follow students home every day, and have  
17 lasting impacts on such students. Conversely, bullying through the use  
18 of technology can begin away from school property, yet have devastating  
19 effects on the student's ability to learn in a safe environment at  
20 school. While bullying through the use of technology may occur away from  
21 school property, it can create a hostile environment for the student at  
22 school and it can materially and substantially disrupt the educational  
23 process. Therefore, to further ensure the safety of students and school  
24 employees, it is the intent of the legislature to provide schools with

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

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1 the tools to identify, prevent, and prohibit bullying against all  
2 students, both conventional and cyber-bullying.

3 § 2. Short title. This act shall be known and may be cited as the "Law  
4 to Encourage the Acceptance of All Differences (LEAD)".

5 § 3. Section 801-a of the education law, as amended by chapter 102 of  
6 the laws of 2012, is amended to read as follows:

7 § 801-a. Instruction in civility, citizenship and character education.  
8 The regents shall ensure that the course of instruction in grades  
9 kindergarten through twelve includes a component on civility, citizen-  
10 ship and character education. Such component shall instruct students on  
11 the principles of honesty, tolerance, personal responsibility, respect  
12 for others, with an emphasis on discouraging acts of [~~harassment,~~  
13 bullying as defined in section eleven of this chapter, discrimination,  
14 observance of laws and rules, courtesy, dignity and other traits which  
15 will enhance the quality of their experiences in, and contributions to,  
16 the community. Such component shall include instruction of safe, respon-  
17 sible use of the internet and electronic communications. The regents  
18 shall determine how to incorporate such component in existing curricula  
19 and the commissioner shall promulgate any regulations needed to carry  
20 out such determination of the regents. For the purposes of this section,  
21 "tolerance," "respect for others" and "dignity" shall include awareness  
22 and sensitivity [~~to harassment, bullying, discrimination and civility in~~  
23 ~~the relations of~~] toward all students, including but not limited to,  
24 people of different races, weights, national origins, ethnic groups,  
25 religions, religious practices, mental or physical abilities, sexual  
26 orientations, genders, and sexes.

27 § 4. Paragraph d of subdivision 2 of section 2801 of the education  
28 law, as added by chapter 181 of the laws of 2000, is amended to read as  
29 follows:

30 d. disciplinary measures to be taken in incidents involving the  
31 possession or use of illegal substances or weapons, the use of physical  
32 force, bullying, vandalism, violation of another student's civil rights  
33 and threats of violence;

34 § 5. Subdivision 2 of section 2801 of the education law is amended by  
35 adding a new paragraph f-1 to read as follows:

36 f-1. procedures by which any school employee, having reasonable cause  
37 to suspect that a student has been the victim of bullying or has commit-  
38 ted an act of bullying as defined in section eleven of this chapter,  
39 shall be required to report such incident to the principal or designee  
40 thereof. If the principal or his or her designee determines that there  
41 is a reasonable cause to believe that the incident occurred, he or she  
42 shall report such incident to the superintendent. Any employee who  
43 reasonably and in good faith makes a report of an act of bullying to the  
44 principal or designee thereof shall have immunity from civil liability  
45 which might otherwise result by reason of such actions;

46 § 6. Section 11 of the education law, as added by chapter 482 of the  
47 laws of 2010, subdivision 7 as amended and subdivision 8 as added by  
48 chapter 102 of the laws of 2012, is amended to read as follows:

49 § 11. Definitions. For the purposes of this article, the following  
50 terms shall have the following meanings:

51 1. "School property" shall [~~mean in or within any building, structure,~~  
52 ~~athletic playing field, playground, parking lot, or land contained with-~~  
53 ~~in the real property boundary line of a public elementary or secondary~~  
54 ~~school, or in or on a school bus, as defined in section one hundred~~  
55 ~~forty-two of the vehicle and traffic law.~~

1 ~~2. "School function" shall mean a school sponsored extra-curricular~~  
2 ~~event or activity] have the same meaning as set forth in section twen-~~  
3 ~~ty-eight hundred one of this chapter.~~

4 [3-] 2. "Disability" shall mean disability as defined in subdivision  
5 twenty-one of section two hundred ninety-two of the executive law.

6 [4. "Employee" shall mean employee as defined in subdivision three of  
7 section eleven hundred twenty five of this title.

8 5-] 3. "Sexual orientation" shall mean actual or perceived heterosexu-  
9 ality, homosexuality or bisexuality.

10 [6-] 4. "Gender" shall mean actual or perceived sex and shall include  
11 a person's gender identity or expression.

12 [7. "Harassment" and "bullying" shall mean the creation] 5. "Creation  
13 of a hostile environment [by]" shall mean engaging in conduct or [by]  
14 threats, intimidation or abuse, including cyberbullying, that (a) has or  
15 would have the effect of unreasonably and substantially interfering with  
16 a student's educational performance, opportunities or benefits, or  
17 mental, emotional or physical well-being; or (b) reasonably causes or  
18 would reasonably be expected to cause a student to fear for his or her  
19 physical safety; or (c) reasonably causes or would reasonably be  
20 expected to cause physical injury or emotional harm to a student; or (d)  
21 occurs off school property and creates or would foreseeably create a  
22 risk of substantial disruption within the school environment, where it  
23 is foreseeable that the conduct, threats, intimidation or abuse might  
24 reach school property. [Acts of harassment and bullying shall include,  
25 but not be limited to, those acts based on a person's actual or  
26 perceived race, color, weight, national origin, ethnic group, religion,  
27 religious practice, disability, sexual orientation, gender or sex.] For  
28 the purposes of this definition the term "threats, intimidation or  
29 abuse" shall include verbal and non-verbal actions.

30 6. "Bullying" shall mean the severe or repeated use by one or more  
31 students or school employees of a written, verbal or electronic  
32 expression, or a physical act or gesture, or any combination thereof,  
33 directed at a student that has the effect of creating a hostile environ-  
34 ment. Acts of bullying shall include, but not be limited to, those acts  
35 which are motivated by a student's actual or perceived race, color,  
36 weight, national origin, ethnic group, religion, religious practice,  
37 disability, sexual orientation, gender, or sex.

38 [8-] 7. "Cyberbullying" shall mean [harassment or] bullying as defined  
39 in subdivision [seven] six of this section[, including paragraphs (a),  
40 (b), (c) and (d) of such subdivision,] where such [harassment or] bully-  
41 ing occurs through any form of electronic communication.

42 § 7. Section 12 of the education law, as added by chapter 482 of the  
43 laws of 2010, subdivision 1 as amended by chapter 102 of the laws of  
44 2012, is amended to read as follows:

45 § 12. [~~Discrimination and harassment~~] Bullying and discrimination  
46 prohibited. 1. No student shall be subjected to [~~harassment or~~] bully-  
47 ing by employees or students on school property [~~or at a school func-~~  
48 ~~tion, nor shall any~~].

49 a. No student or school employee shall subject any student of a public  
50 school or publicly funded special education program to bullying as  
51 defined in this article.

52 b. Any student or school employee found to be in violation of subdivi-  
53 sion two of this section in a public school or on school property shall  
54 be subject to disciplinary action in accordance with the district's code  
55 of conduct adopted pursuant to section twenty-eight hundred one of this  
56 article and the applicable discipline procedures. Any student or school

1 employee found to be in violation of subdivision two of this section in  
2 a publicly funded special education program shall be subject to disci-  
3 pline under the policies and procedures of such program governing  
4 conduct.

5 c. Nothing in this section shall apply, or be construed to apply, to  
6 private, religious or denominational educational institutions. Nor shall  
7 this section preclude or limit, or be perceived to preclude or limit,  
8 any right or cause of action provided under any local, state or federal  
9 ordinance, law, rule or regulation.

10 2. No student shall be subjected to discrimination based on a person's  
11 actual or perceived race, color, weight, national origin, ethnic group,  
12 religion, religious practice, disability, sexual orientation, gender, or  
13 sex by school employees or students on school property or at a school  
14 function. Nothing in this subdivision shall be construed to prohibit a  
15 denial of admission into, or exclusion from, a course of instruction  
16 based on a person's gender that would be permissible under section thir-  
17 ty-two hundred one-a or paragraph (a) of subdivision two of section  
18 twenty-eight hundred fifty-four of this chapter and title IX of the  
19 Education Amendments of 1972 (20 U.S.C. section 1681, et. seq.), or to  
20 prohibit, as discrimination based on disability, actions that would be  
21 permissible under section 504 of the Rehabilitation Act of 1973.

22 ~~[2. An age appropriate version of the policy outlined in subdivision~~  
23 ~~one of this section, written in plain language, shall be included in the~~  
24 ~~code of conduct adopted by boards of education and the trustees or sole~~  
25 ~~trustee pursuant to section twenty eight hundred one of this chapter and~~  
26 ~~a summary of such policy shall be included in any summaries required by~~  
27 ~~such section twenty eight hundred one.]~~

28 § 8. Section 13 of the education law, as amended by chapter 102 of the  
29 laws of 2012, is amended to read as follows:

30 § 13. Policies and guidelines. The board of education and the trustees  
31 or sole trustee of every school district shall create policies, proce-  
32 dures and guidelines that shall include, but not be limited to:

33 1. Policies and procedures intended to create a school environment  
34 that is free from [~~harassment,~~] bullying and discrimination, that  
35 include but are not limited to provisions which:

36 a. identify the principal, superintendent or the principal's or super-  
37 intendent's designee as the school employee charged with receiving  
38 reports of [~~harassment,~~] bullying and discrimination;

39 b. enable students and parents to make an oral or written report of  
40 [~~harassment,~~] bullying or discrimination to teachers, administrators and  
41 other school personnel that the school district deems appropriate;

42 c. require school employees who witness [~~harassment,~~] bullying or  
43 discrimination, or receive an oral or written report of [~~harassment,~~]  
44 bullying or discrimination, to promptly orally notify the principal,  
45 superintendent or the principal's or superintendent's designee not later  
46 than one school day after such school employee witnesses or receives a  
47 report of [~~harassment,~~] bullying or discrimination, and to file a writ-  
48 ten report with the principal, superintendent or the principal or super-  
49 intendent's designee not later than two school days after making such  
50 oral report;

51 d. require the principal, superintendent or the principal's or super-  
52 intendent's designee to lead or supervise the thorough investigation of  
53 all reports of [~~harassment,~~] bullying and discrimination, and to ensure  
54 that such investigation is completed promptly after receipt of any writ-  
55 ten reports made under this section;

1 e. require the school, when an investigation reveals any such verified  
2 [harassment,] bullying or discrimination, to take prompt actions reason-  
3 ably calculated to end the [harassment,] bullying or discrimination,  
4 eliminate any hostile environment, create a more positive school culture  
5 and climate, prevent recurrence of the behavior, and ensure the safety  
6 of the student or students against whom such [harassment,] bullying or  
7 discrimination was directed. Such actions shall be consistent with the  
8 guidelines created pursuant to subdivision four of this section;

9 f. prohibit retaliation against any individual who, in good faith,  
10 reports, or assists in the investigation of, [harassment,] bullying or  
11 discrimination;

12 g. include a school strategy to prevent [harassment,] bullying and  
13 discrimination;

14 h. require the principal to make a regular report on data and trends  
15 related to [harassment,] bullying and discrimination to the superinten-  
16 dent;

17 i. require the principal, superintendent or the principal's or super-  
18 intendent's designee, to notify promptly the appropriate local law  
19 enforcement agency when such principal, superintendent or the princi-  
20 pal's or superintendent's designee, believes that any [harassment,]  
21 bullying or discrimination constitutes criminal conduct;

22 j. include appropriate references to the provisions of the school  
23 district's code of conduct adopted pursuant to section twenty-eight  
24 hundred one of this chapter that are relevant to [harassment,] bullying  
25 and discrimination;

26 k. require each school, at least once during each school year, to  
27 provide all school employees, students and parents with a written or  
28 electronic copy of the school district's policies created pursuant to  
29 this section, or a plain-language summary thereof, including notifica-  
30 tion of the process by which students, parents and school employees may  
31 report [harassment,] bullying and discrimination. This subdivision shall  
32 not be construed to require additional distribution of such policies and  
33 guidelines if they are otherwise distributed to school employees,  
34 students and parents;

35 1. maintain current versions of the school district's policies created  
36 pursuant to this section on the school district's internet website, if  
37 one exists;

38 2. Guidelines to be used in school training programs to discourage the  
39 development of [harassment,] bullying and discrimination, and to make  
40 school employees aware of the effects of [harassment,] bullying, cyber-  
41 bullying and discrimination on students and that are designed:

42 a. to raise the awareness and sensitivity of school employees to  
43 potential [harassment,] bullying and discrimination, and

44 b. to enable employees to prevent and respond to [harassment,] bully-  
45 ing and discrimination; and

46 3. Guidelines relating to the development of nondiscriminatory  
47 instructional and counseling methods, and requiring that at least one  
48 staff member at every school be thoroughly trained to handle human  
49 relations in the areas of race, color, weight, national origin, ethnic  
50 group, religion, religious practice, disability, sexual orientation,  
51 gender, and sex; and

52 4. Guidelines relating to the development of measured, balanced and  
53 age-appropriate responses to instances of [harassment,] bullying or  
54 discrimination by students, with remedies and procedures following a  
55 progressive model that make appropriate use of intervention, discipline  
56 and education, vary in method according to the nature of the behavior,

1 the developmental age of the student and the student's history of prob-  
2 lem behaviors, and are consistent with the district's code of conduct;  
3 and

4 5. Training required by this section shall address the social patterns  
5 of [~~harassment,~~] bullying and discrimination, as defined in section  
6 eleven of this article, including but not limited to those acts based on  
7 a person's actual or perceived race, color, weight, national origin,  
8 ethnic group, religion, religious practice, disability, sexual orien-  
9 tation, gender or sex, the identification and mitigation of [~~harasse-~~  
10 ~~ment,~~] bullying and discrimination, and strategies for effectively  
11 addressing problems of exclusion, bias and aggression in educational  
12 settings.

13 § 9. Section 14 of the education law, as amended by chapter 102 of the  
14 laws of 2012, subdivision 5 as amended by chapter 90 of the laws of  
15 2013, is amended to read as follows:

16 § 14. Commissioner's responsibilities. The commissioner shall:

17 1. Provide direction, which may include development of model policies  
18 and, to the extent possible, direct services, to school districts  
19 related to preventing [~~harassment,~~] bullying and discrimination and to  
20 fostering an environment in every school where all children can learn  
21 free of manifestations of bias;

22 2. Provide grants, from funds appropriated for such purpose, to local  
23 school districts to assist them in implementing the guidelines set forth  
24 in this section;

25 3. Promulgate regulations to assist school districts in implementing  
26 this article including, but not limited to, regulations to assist school  
27 districts in developing measured, balanced, and age-appropriate  
28 responses to violations of this policy, with remedies and procedures  
29 following a progressive model that make appropriate use of intervention,  
30 discipline and education and provide guidance related to the application  
31 of regulations; and

32 4. Provide guidance and educational materials to school districts  
33 related to best practices in addressing cyberbullying and helping fami-  
34 lies and communities work cooperatively with schools in addressing  
35 cyberbullying, whether on or off school property or at or away from a  
36 school function.

37 5. The commissioner shall prescribe regulations that school profes-  
38 sionals applying on or after December thirty-first, two thousand thir-  
39 teen for a certificate or license, including but not limited to a  
40 certificate or license valid for service as a classroom teacher, school  
41 counselor, school psychologist, school social worker, school administra-  
42 tor or supervisor or superintendent of schools shall, in addition to all  
43 other certification or licensing requirements, have completed training  
44 on the social patterns of [~~harassment,~~] bullying and discrimination, as  
45 defined in section eleven of this article, including but not limited to  
46 those acts based on a person's actual or perceived race, color, weight,  
47 national origin, ethnic group, religion, religious practice, disability,  
48 sexual orientation, gender or sex, the identification and mitigation of  
49 [~~harassment,~~] bullying and discrimination, and strategies for effec-  
50 tively addressing problems of exclusion, bias and aggression in educa-  
51 tional settings.

52 § 10. Section 15 of the education law, as amended by chapter 102 of  
53 the laws of 2012, is amended to read as follows:

54 § 15. Reporting by commissioner. The commissioner shall create a  
55 procedure under which material incidents of [~~harassment,~~] bullying and  
56 discrimination on school [~~grounds or at a school function~~] property, as

1 such term is defined in section twenty-eight hundred one of this chap-  
2 ter, are reported to the department at least on an annual basis. Such  
3 procedure shall provide that such reports shall, wherever possible, also  
4 delineate the specific nature of such incidents of [~~harassment,~~] bully-  
5 ing and discrimination, provided that the commissioner may comply with  
6 the requirements of this section through use of the existing uniform  
7 violent incident reporting system. In addition the department may  
8 conduct research or undertake studies to determine compliance throughout  
9 the state with the provisions of this article.

10 § 11. Section 16 of the education law, as amended by chapter 102 of  
11 the laws of 2012, is amended to read as follows:

12 § 16. Protection of people who report [~~harassment,~~] bullying or  
13 discrimination. Any person having reasonable cause to suspect that a  
14 student has been subjected to [~~harassment,~~] bullying or discrimination,  
15 by an employee or student, on school [~~grounds or at a school function~~]  
16 property, as such term is defined in section twenty-eight hundred one of  
17 this chapter, who, acting reasonably and in good faith, reports such  
18 information to school officials, to the commissioner or to law enforce-  
19 ment authorities, acts in compliance with paragraph e or i of subdivi-  
20 sion one of section thirteen of this article, or otherwise initiates,  
21 testifies, participates or assists in any formal or informal proceedings  
22 under this article, shall have immunity from any civil liability that  
23 may arise from the making of such report or from initiating, testifying,  
24 participating or assisting in such formal or informal proceedings, and  
25 no school district or employee shall take, request or cause a retaliato-  
26 ry action against any such person who, acting reasonably and in good  
27 faith, either makes such a report or initiates, testifies, participates  
28 or assists in such formal or informal proceedings.

29 § 12. This act shall take effect immediately.